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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Junior Golf Company

Serial No. 75/169,949

Daniel J. Duffy of Cassem, Tierney, Adams, Gotch & Douglas
for applicant.

Diane Beth Melnick, Trademark Examining Attorney, Law
Office 108 (David Shallant, Managing Attorney).

Before Walters, Chapman and Bottorff, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

A trademark application has been filed¹ to register on
the Principal Register the mark LITTLE TIGER for "golf
equipment for children, namely, golf bags and golf clubs,
excluding golf balls," in International Class 28.²

¹ The application was filed originally by Patrick J. Duffy. A copy of
an assignment of the application to The Junior Golf Company was
submitted in this application. We note that, if this application
should ultimately proceed to registration, the assignment must be
properly recorded with the United States Patent and Trademark Office
for a registration to issue in the name of the assignee. See Section
10 of the Act.

² Serial No. 75/169,949, filed on September 23, 1996, based on an
allegation of a bona fide intention to use the mark in commerce. An
amendment to allege use was filed on October 14, 1997, alleging, as

The Trademark Examining Attorney has finally refused registration under Sections 2(a) and (c) of the Trademark Act, 15 U.S.C. § 1052(a) and (c), on the ground that applicant's mark falsely suggests a connection with the professional golfer Tiger Woods, whose consent to registration herein is not of record.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal on both asserted grounds.

Considering, first, the refusal under Section 2(a) of the Act, the Examining Attorney contends that "the name 'Tiger,' together with goods which are commonly associated with golf, points unmistakably to Tiger Woods, the professional golfer"; that, in the context of golf, the name "Tiger" without any surname points unmistakably to Tiger Woods; that "Tiger Woods has achieved an unprecedented level of fame in the past several years, both as an amateur and a professional golfer"; and that "the inclusion of the word 'little' in applicant's mark simply reinforces the connotation that the goods are associated with Tiger Woods and intended for children." In support of

amended, a date of first use and first use in commerce of March 3, 1997.

her position, the Examining Attorney has submitted numerous excerpts of articles from the LEXIS/NEXIS database, and from magazines and Internet web sites, all referring to the golfer, Tiger Woods, as "Tiger Woods" or simply as "Tiger."

Applicant contends that the Examining Attorney has not established that applicant's mark, LITTLE TIGER, is unmistakably associated with and points uniquely to Tiger Woods; that "the word 'tiger' has for many years been associated with and identified as an animal by the general public and certain athletic teams." Applicant does not dispute that Tiger Woods is famous; however, applicant contends that his fame is "relatively new" and "does not erase the association of the word 'tiger' with an animal, especially within the athletic industry." Applicant describes its reasons for choosing its mark as evidence of its lack of intent to associate the mark with Tiger Woods.

Section 2(a) requires that registration be refused if the mark sought to be registered "consists of or comprises matter which ... may falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute." As the Court explained in *University of Notre Dame du Lac v. J.C. Gourmet Food Imports, Inc.*, 703 F.2d 1373, 217 USPQ 505 (Fed. Cir. 1983):

A reading of the legislative history with respect to what became Section 2(a) shows that the drafters were concerned with protecting the name of an individual or institution which was not a technical "trademark" or "trade name" upon which an objection could be made under Section 2(d) ... Although not articulated as such, it appears that the drafters sought by Section 2(a) to embrace the concepts of the right to privacy, an area of the law then in an embryonic state ...

The Examining Attorney, who has the burden of establishing the elements of the refusal to register under Section 2(a), must establish that the mark in question points uniquely to persons, living or dead, institutions, beliefs, or national symbols. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports, Inc.*, *supra* at 509.

Further, the Examining Attorney must establish that such person or institution: (1) is not connected with the goods or services performed by applicant under the mark, and (2) is sufficiently famous that a connection with such person or institution would be presumed when applicant's mark is used in connection with its goods or services. *See, In re Sloppy Joe's International Inc.*, 43 USPQ2d 1350 (TTAB 1997); *In re North American Free Trade Association*, 43 USPQ2d 1282 (TTAB 1997); *In re Nuclear Research Corp.*, 16 USPQ2d 1316 (TTAB 1990); *In re Cotter & Co.*, 228 USPQ 202, 204 (TTAB 1985); and *Buffett v. Chi-Chi's Inc.*, 226 USPQ 428 (TTAB 1985).

We turn, first, to the requirement that the Office establish that LITTLE TIGER points uniquely to a person, in this case, Tiger Woods. The evidence made of record by the Examining Attorney clearly establishes that Tiger Woods has received widespread publicity as a golfer since at least 1996, the earliest date of the excerpts in this record; and that, as applicant does not dispute, he has been famous as a golfer since that time, regardless of whether his status was as a professional or an amateur. While Tiger Woods' fame as a golfer may be relatively recent, the record establishes his notoriety since at least 1996; and this predates applicant's first use of its mark in connection with the identified goods.

Clearly, in determining whether a mark points uniquely to a particular person or persons, the context of the use of the mark and the nature and extent of the person's fame is of utmost relevance. In this case, both Tiger Woods' fame and applicant's goods pertain to the game of golf. While we accept that the word "tiger," in everyday parlance, refers to an animal, we would be remiss if we considered the word "tiger" in a vacuum.³ Rather, we

³ The fact that applicant's specimen of record pictures the mark in close proximity to a drawing of a four-legged tiger is immaterial to our consideration. The mark that is the subject of this application does not contain any design element and we must assume that it can appear in any context, with or without any design element.

conclude that the word "tiger," in connection with golf activities and products, points unmistakably and uniquely to Tiger Woods. Although the word LITTLE modifies the word TIGER in applicant's mark, applicant's goods are golf products for children. Similarly, the mark LITTLE TIGER, used on golf products for children, is likely to be understood as pointing unmistakably and uniquely to Tiger Woods and indicating the child's desire to emulate Tiger Woods. Thus, we conclude that the mark LITTLE TIGER, in connection with applicant's identified golf products for children, points uniquely to Tiger Woods. Applicant's intent in this regard is immaterial to our consideration under Section 2(a) of the Act.

Second, it is clear, as applicant concedes, that Tiger Woods is not connected in any way with the goods identified by applicant's LITTLE TIGER mark.

Finally, as indicated above, the evidence establishes that Tiger Woods is sufficiently famous that a connection with him will be presumed when applicant's mark is used on its identified goods.

Accordingly, we find that the Examining Attorney has met the burden of proving that applicant's mark LITTLE TIGER falsely suggests a connection with the golfer Tiger Woods, and we affirm the refusal on this ground.

Considering, next, the refusal to register under Section 2(c) of the Act, the Examining Attorney contends that, as argued in connection with the Section 2(a) refusal, applicant's mark, LITTLE TIGER, for golf products points unmistakably to Tiger Woods; and that his consent is not of record in this application. Consistent with its argument in connection with the Section 2(a) refusal, applicant contends that its mark does not identify a particular living individual within the meaning of the Act and, thus, consent is not necessary.

Section 2(c) of the Act requires that registration be refused if the mark sought to be registered "consists of or comprises a name ... identifying a particular living individual except by his written consent" It is not necessary that the matter involved be the full name of the living individual. *Reed v. Bakers Engineering & Equipment Co.*, 100 USPQ 196 (Chief Examiner 1954). Written consent under Section 2(c) is required if a real person bearing the name is famous or publicly connected with the business in which the mark is used, so that the public will associate that person's name with the goods and assume that he or she is being identified. *In re Sauer*, 27 USPQ2d 1073 (TTAB 1993), *aff'd*, 26 F.3d 140, (Fed. Cir. 1994).

As held above in relation to Section 2(a), the mark LITTLE TIGER points unmistakably and uniquely to the famous golfer Tiger Woods. It is clear that the public will associate Tiger Woods' name with the identified goods. Therefore, his written consent to registration is required. The refusal under Section 2(c) of the Act is affirmed.

Decision: The refusal to register is affirmed under Sections 2(a) and (c) of the Act.

C. E. Walters

B. A. Chapman

C. M. Bottorff
Administrative Trademark Judges,
Trademark Trial and Appeal Board